

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

March 24, 2011

In the Matter of MEREDITH, Minor.

No. 300050

Berrien Circuit Court

Family Division

LC No. 2009-000080-NA

Before: GLEICHER, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Respondent C. Cowles appeals as of right the trial court order terminating his parental rights to his minor child under MCL 712A.19b(3)(g).¹ The trial court also terminated the parental rights of the minor child's mother, R. Kirkdorfer, but she has not appealed that decision and is not a party to this appeal. We affirm.

I. FACTS

Cowles was the 27-year-old biological, legal, non-custodial father of the nearly three-year-old minor child when this proceeding commenced. The Department of Human Services (DHS) filed a petition in July 2009, alleging that Kirkdorfer and the minor child's stepfather sexually abused two seven-year-old children for whom they provided daycare. As a result of the investigation, the minor child was removed from the Kirkdorfers' custody and placed in foster care. Cowles, who resided in Niles with his spouse of two years, was notified of the minor child's placement in foster care.

When DHS filed the initial petition in the minor child's case, it did not request termination of her mother's parental rights. The petition named Cowles an interested party by virtue of being the minor child's father, but did not designate him a respondent. At a July 2009 preliminary hearing, the trial court authorized the petition and ordered regular, frequent, and

¹ MCL 712A.19b(3)(g) (stating that the trial court may terminate a parent's rights to a child if the court finds, by clear and convincing evidence, that the parent, without regard to intent, failed to provide proper care or custody and there is no reasonable expectation that parent will be able to provide such within a reasonable time considering the child's age).

supervised visits between Cowles and the minor child, at DHS discretion. The trial court appointed counsel for Cowles, and Cowles attended and was represented by counsel at all subsequent hearings.

Counsel for DHS and the lawyer guardian ad litem objected to allowing visits because Cowles was a complete stranger to the minor child and he was a registered sex offender due to an adjudication of second-degree criminal sexual conduct at age 15 arising out of an offense committed with a 13-year-old girl. Cowles had been listed on the sex offender registry since August 1997. Cowles had not seen the minor child since she celebrated her 1st birthday in September 2007, and he did not even interact with her at that time.

Cowles and Kirkdorfer had been involved in a 2006 Friend of the Court proceeding. Although no specific order in that proceeding prohibited Cowles contact with the minor child, there was also no provision for Cowles' visitation. And the mother denied him contact with the minor child, assuming that the court would want her to prohibit Cowles contact with the minor child because of his sex offender history. All parties agreed that before visits commenced, Cowles and the minor child should be assessed in an effort to gauge the appropriateness and impact of the visits on the minor child.

At an October 2009 adjudication trial, DHS stated that it would not provide reunification services to Cowles because DHS policy prohibited reunification with sex offenders, but noted that Cowles could independently initiate services. The lawyer guardian ad litem argued that DHS was required to move toward either termination or reunification, and it did not make sense to withhold reunification services if termination was no longer the goal. The trial court agreed and ordered the DHS to provide Cowles parenting classes and a psychological evaluation. Cowles' visits with the minor child were reserved "pending assessment/psychological report and then as recommended by the evaluator."

The parties selected Robin Zollar, who had been providing weekly counseling for the minor child, to assess whether the minor child should commence visits with Cowles, and she reported to Cowles' DHS caseworker, Tia Gipson in November 2009:

Given what appears to be, from his criminal record, an inability to control his aggressive behavior (at least three assault and battery charges), and a criminal sexual conduct charge involving a child under the age of 13, it would not appear that it would be appropriate for Mr. Cowells [sic] to begin contact with [the minor child]. Additionally, it appears that [the minor child] has absolutely no idea who Mr. Cowells [sic] is, and considers her stepfather to be her father.

Zollar recommended Cowles' full psychological evaluation, and thereafter possibly a psychosexual evaluation.

Cowles had already undergone a life works psychological evaluation with Dr. Paul Kitchen in November 2009. Cowles presented as very friendly and cooperative, having good contact with reality and good self-esteem. He exhibited adequate common judgment but a limited level of abstract reasoning. He did not know why the minor child was not placed with him but stated that he was "going to court to get her," and understood he was required by the

DHS to complete parenting classes and undergo the psychological evaluation to determine “if I’m capable to be around my daughter.” He reported completing special education classes and graduating from high school, but he was unable to read. He had never been employed and received SSI disability benefits for Attention Deficit Hyperactivity Disorder and seizures. The Wechsler Adult Intelligence Scale showed Cowles had a full scale IQ of 58, which placed him in the mentally deficient range. And he scored lower than the first percentile on the Digit Span subtest (measuring short-term memory, retention, processing and recall), Matrix Reasoning subtest (measuring visual spatial reasoning skill), and Arithmetic subtest (measuring arithmetical ability). In the Parenting Interview, Cowles stated he had never seen the minor child, but was unable to think of any potential weaknesses in his parenting ability; he felt that he would be a very good parent.

Dr. Kitchen described Cowles as “an extremely impulsive and emotionally immature individual” who “demonstrates significant limitations in his intellectual capacity” that would cause him to “have difficulty taking care of his own day-to-day needs with any degree of independence.” Dr. Kitchen concluded, “[h]e certainly would lack the capacity to effectively parent a young child,” and his “impulsiveness, emotional immaturity, and limited intellectual capacity would make it difficult for him to be successful in any form of primary custodial care for his child.” He recommended that Cowles complete parenting classes before having any visits with the minor child.

In June 2010, DHS filed a termination petition requesting termination of Cowles’ parental rights to the minor child pursuant to MCL 712A.19b(3)(g), alleging that he had not seen the minor child for two years, “had no real relationship” with her, was a registered sex offender, had anger issues, failed to complete parenting classes, and that his psychological evaluation indicated he lacked the ability to be the minor child’s primary caretaker.

The termination hearing was held in August 2010. Gipson testified that Cowles’ seizures, for which he reported taking medication, would not prevent him from parenting the minor child, but testified to his lack of stable housing and failure to request a home study or the minor child’s placement, limited monthly income, failure to complete parenting classes and obtain visits with the minor child, failure to complete a psychosexual evaluation, denial of criminal sexual conduct as a juvenile, tendency to become angry easily, failure to improve impulse control despite counseling, and cognitive impairment. Gipson stated that Cowles maintained regular contact with her and inquired as to the minor child’s well-being, but did not send the minor child gifts, focused solely on obtaining visits, and did not mention assuming custody of the minor child. Based on her contact with Cowles, Gipson felt that his limited cognitive ability to evaluate situations and make good decisions negatively impacted his ability to parent a young child. In telephone conversations with Gipson, Cowles often used speakerphone to include his spouse in the conversation so that she could help him understand what was being communicated. Gipson noted that Cowles’ spouse was supportive and could assist him in parenting, but also supported his denial of criminal sexual conduct.

Gipson recommended termination of Cowles’ parental rights and felt that termination was in the minor child’s best interests. She found it significant that Cowles was a registered sex offender who denied any wrongdoing, was unable to complete services that were offered, there was no indication that providing additional time would remedy his inability to complete or

benefit from services, he experienced difficulty caring for his own needs and had problems with decision making and impulse control, and was unable to properly care for a four-year-old child.

Cowles testified to graduating from special education high school classes and taking medication for bipolar disorder and seizures. He stated that the Kirkdorfers had prevented his contact with the minor child, but he paid child support out of his disability benefits. He stated that he did not pursue visitation with the minor child through the Friend of the Court because they refused to talk to him and he did not know how to go about it. He testified that receiving the telephone call that the minor child was in foster care “freaked [him] out,” and from the time of that call, he had wanted to see the minor child. He did not care whether visits were supervised or unsupervised, but stated, “That’s all I want to do is see my daughter.”

When questioned about his sex offender status, he commented that he wished people would quit bringing up that juvenile offense, and he claimed that his father, not he, had committed that crime. When questioned about his criminal history printout, Cowles stated, “I don’t remember none of this stuff,” and when asked whether memory loss was an issue for him replied “Probably. I don’t know.” He stated that he requested the minor child’s custody when he first discovered she had been placed in foster care, but never requested it again because Gipson never talked to him about it, and he did not know how to talk to Gipson about it. He admitted he lacked stable housing, which caused him to be unable to physically care for a child, but desired a relationship with the minor child. When asked whether he was willing to have an evaluation and work on issues relating to his previous CSC offense, Cowles stated “Yes. But I know I didn’t do it so why keep bringing it up?”

The trial court noted that, from the evidence on the record, Cowles’ ability to parent the minor child appeared to be problematic and that the proceeding was not about visitation but custody and permanence for the minor child. It noted that there was delay in initiating services for Cowles but stated that Cowles had not presented a plan for the minor child’s permanence and, given his limitations, even with services, he would not be able to care for anyone but himself. Accordingly, the trial court terminated Cowles’ parental rights pursuant to MCL 712A.19b(3)(g). It also found that termination of Cowles’ rights was in the minor child’s best interests. Cowles now appeals.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.² We review for clear error a trial court’s decision terminating parental rights.³ A finding is clearly erroneous if,

² MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

³ MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633.

although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.⁴ We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁵

B. ANALYSIS

The evidence showed that Cowles had no contact with the three-year-old minor child after Kirkdorfer was granted full custody in 2006. Cowles' visits were reserved in the custody order due to his sex offender status, stemming from a juvenile second-degree criminal sexual conduct offense in 1997. And he never took legal steps to obtain visits with the child. Cowles also had cognitive limitations that might have made it difficult for him to oppose Kirkdorfer and navigate the legal system to obtain visits. But regardless of ability or intent, Cowles had no relationship with the minor child and did not provide proper care or custody for the first three years.

The minor child was removed from Kirkdorfer due to allegations of Kirkdorfer's sexual abuse of other children in the home. Cowles was notified of the proceeding and requested visits, but he did not specifically request reunification. And DHS did not immediately provide reunification services. Cowles was a stranger to the child. His psychological evaluation showed that he had poor impulse control; was very emotionally immature; and had permanent cognitive limitations placing him in the mentally deficient range and causing difficulty with short-term memory, processing and recall, retention, scheduling, making good decisions, and reasoning. The evaluator concluded that Cowles "certainly would lack the capacity to effectively parent a young child," and the caseworker, the child's counselor, and another evaluator recommended that Cowles not visit the minor child.

The trial court noted that commencement of Cowles' services had been delayed due to DHS policy precluding reunification with a sex offender. However, the evidence showed that the delay did not contribute to Cowles' failure to comply with or benefit from services. During the 10 months that services were actually provided, Cowles and his spouse were referred to two parenting programs, which they failed to complete; he had three appointments for psychosexual evaluation, and he failed to timely attend; and he did not make significant progress in the behavior-based counseling provided to accommodate his concrete reasoning. Completing services was a significant obstacle for Cowles, and his cognitive limitations made it unlikely that he would complete services and significantly benefit from them within a reasonable time. Cowles' limitations were permanent, and the trial court concluded that, even with additional services, Cowles would remain unable to care for anyone but himself. There was no reasonable expectation that Cowles would be able to properly care for the child within a reasonable time, and Cowles did not suggest custody with himself as a permanency plan. As the trial court noted, the proceeding addressed custody and permanence, not visitation.

⁴ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁵ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

We conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of Cowles' parental rights under MCL 712A.19b(3)(g).

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

Once DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is clearly in the child's best interests, then the trial court shall order termination of parental rights.⁶ There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.⁷ We review the trial court's decision regarding the child's best interests for clear error.⁸

B. ANALYSIS

Given clear and convincing evidence that reunification would not occur within a reasonable time, that there was no relationship between the minor child and Cowles, and that Cowles did not request the minor child's custody but merely desired visits, the trial court did not err in finding that terminating Cowles' parental rights to afford the minor child a permanent home was in the child's best interests. We conclude that the trial court did not clearly err in finding that termination of Cowles' parental rights was in the child's best interests.

We affirm.

/s/ Elizabeth L. Gleicher
/s/ William C. Whitbeck
/s/ Donald S. Owens

⁶ MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich at 351.

⁷ *In re Trejo Minors*, 462 Mich at 353.

⁸ *Id.* at 356-357.